IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 20069 of 2007(L)

AGAINST THE ORDER IN IA 1224/2006 IN OS.117/2003 of MUNSIFF COURT, TIRUR
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PETITIONERS:
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1. KOLOTHPARAMBIL MUHAMMED HANEEFA MUSLIAR,
S/O. MOIDEEN, VETTAM PALLIPPRAM AMSOM, DESOM,
TIRUR TALUK, MALAPPURAM DISTRICT.

2. KOLONGARAPARAMBIL RABIYA,
D/O. IMBICHAMMED, VETTAM PALLIPPRAM AMSOM, DESOM,
TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRIC.M.MOHAMMED IQUABAL

RESPONDENTS:
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1. ATHOLITHARA AYYAPPAN @ KUTTPPA,
S/O. CHATHAPPAN, VETTAM PALLIPPRAM AMSOM, DESOM,
TIRUR TALUK, MALAPPURAM DISTRICT.

2. KOMALAVALLI @ MANI,
W/O. ATHOLITHARA AYYAPPAN @ KUTTPPA,
VETTAM PALLIPPRAM AMSOM, DESOM, TIRUR TALUK,
MALAPPURAM DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 20069 OF 2007

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Dated this the 29th day of June, 2007.

J U D G M E N T

This writ petition is preferred seeking to quash the order of the learned Munsiff, Tirur in I.A.1224/06 in O.S.117/03. The petition is one for remitting the Commissioner's plan and report. A perusal of the plaint, written statement and Commissioner's rough sketch and report would show that there is a public way on the eastern side of plaint A and B schedule property. The defendants' property is situated on the western side. The disputed pathway is marked by the Commissioner as ABCD. The plaint B schedule is situated on the southern side of this pathway and A schedule is situated on the northern side of the pathway. It is the case of the plaintiff that not only the defendants are having a right of way through ABCD, the plaintiffs are also having right of way and there are entrances opening from this way to the northern and southern sides which would indicate the usage by the plaintiff.

2. The Commissioner has also reported that from the public way on the eastern side there is an opening marked as 'G'

which will take one to A schedule. But a perusal would reveal that the only entrance to the plaint B schedule is only through E2. So what the petitioner wants now the Commissioner to do is to specifically state that there is no other way which will take one to the B schedule. Besides that they also want additional particulars in the form that there are other ways which takes the defendants to their property. In order to have a proper determination of the matter especially with respect to B schedule it is desirable that the very same Commissioner inspects the property and report about the factors wanted by the petitioner herein. Just because it is a belated application it need not be dismissed because the materials to be collected are absolutely relevant to decide the real controversy between the parties. Therefore, the order under challenge is set aside and the petition is allowed. The learned Munsiff is directed to remit the Commissioner's plan and report to the same Commissioner and both the parties are permitted to file fresh work memo indicating the points which they want to be noted by the Commissioner.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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